



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 18.07.2022.

% **Judgment delivered on: 22.07.2022.**

+ **LPA 46/2022 and C.M. Nos.2970/2022 & 2972/2022**

DELHI TRANSPORT CORPORATION Appellant

Through: Ms. Avnish Ahlawat, Mr. N.K. Singh,
Ms. Tania Ahlawat, Ms. Palak
Rohmetra, Ms. Lavnya Kaushik &
Ms. Aliza Alam, Advocates.

versus

SH ASHOK KUMAR Respondent

Through: Mr. G.S. Charya, Advocate.

+ **LPA 119/2022 and C.M. No.8083/2022**

SHRI ASHOK KUMAR Appellant

Through: Mr. G.S. Charya, Advocate.

versus

DELHI TRANSPORT CORPORATION Respondent

Through: Ms. Avnish Ahlawat, Mr. N.K. Singh,
Ms. Tania Ahlawat, Ms. Palak
Rohmetra, Ms. Lavnya Kaushik &
Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal is arising out of common judgment passed in W.P.(C.) No. 6748/2003 in *Shri Ashok Kumar Vs. D.T.C. & Ors.* and in



W.P.(C.) No. 8186/2004 in *Delhi Transport Corporation Vs. Ashok Kumar*.

2. The facts of the case reveal that the respondent Ashok Kumar was an employee serving in Delhi Transport Corporation (herein after referred as DTC). He joined the services of the Corporation as Assistant Fitter (Daily wages) in the year 1982, and was brought on monthly rates in the year 1983. While he was serving on the post of Fitter, on 11.08.1991, he allegedly entered into the Office of Forman under the influence of the Liquor and assaulted one Sh. Ranjit Singh, Asst. Forman and abused him. He was placed under suspension on 12.08.1991, and, thereafter, a chargesheet was issued on 30.08.1991. As per the imputation of misconduct, he allegedly forcibly got his attendance marked by Sh. L. N. Benket, Forman at 22.15 Hrs., and assaulted one Assistant Forman Sh. Ranjit Kumar, who was present there.

3. A reply was filed by the employee in question, and, thereafter, not being satisfied by the reply, Enquiry Officer was appointed by the Competent Disciplinary Authority. The Enquiry Officer concluded the enquiry and submitted a detailed report on 20.02.1992, and Disciplinary Authority based upon the enquiry report on 12.03.1992, issued a show cause notice, and, thereafter finally an order of removal was passed on 24.04.1992.

4. He was also remitted one month's salary by Money Order in order to ensure compliance of Section 33(2)(b) of the I. D. Act. The DTC also filed an application under Section 33(2)(b) of the I.D. Act before the Industrial Tribunal for approval of the action taken by the Corporation.



5. The Labour Court framed the issues in the matter on 11.09.1994, and by an order dated 16.08.2002 decided the validity of the enquiry against the employer on the ground that the Enquiry Officer was not produced by the DTC. The Presiding Officer, thereafter, passed an order on 12.05.2002, rejecting the application preferred by the employer preferred under Section 33(2)(b) of the I. D. Act.

6. The appellant, thereafter, preferred a writ petition being W.P.(C.) No. 8186/2004, being aggrieved by the order dated 02.05.2003. An application was preferred under Section 17B of the I.D. Act by the respondent in the writ petition. The application was allowed and the appellant was directed to comply with the provisions of Section 17B of the I. D. Act, and a total amount of Rs. 13,93,408/- has been paid to the workman as wages under Section 17B of the I.D. Act for the period till the matter has been decided by the Learned Single Judge. It is noteworthy to mention that the workman was removed from service on 12.03.1992, and an order was passed in his favour by Labour Court on 02.05.2003. The Learned Single Judge has granted a lumpsum compensation for the period from 1992 to 2003 to the tune of Rs. 10 Lacs.

7. Learned counsel appearing for the DTC has vehemently argued before this Court that in the present case, the employee in question has assaulted a senior officer, and there was sufficient evidence on record to prove the misconduct, and hence the order passed by the Labour Court and the order passed by the Learned Single Judge deserves to be set aside.



8. This Court has heard learned counsel for the parties at length and perused the record. The undisputed facts of the case reveal that on account of alleged misconduct, which took place on 11.08.1991, a chargesheet was issued to the Workman, and finally Disciplinary Authority passed an order of removal on 24.04.1992.

9. The facts of the case also reveal that a month's salary by Money Order – as required under Section 33(2)(b) of the I. D. Act, was remitted to the Workman, and the appellant DTC has filed an application under Section 33(2)(b) of the I. D. Act, before the Industrial Tribunal for approval of the action taken by the Corporation under Section 33(2)(b) of the I. D. Act, which is reproduced as under:

“The above named applicant begs to state as follow:-

- 1. That the applicant, D.T.C. is a body corporate created under section 3 of the Road Transport Corporation Act, 1950 read with the Delhi Transport Law (Amendment) Act, 1971 having perpetual succession and a common seal and by virtue of the provisions of the said Act can sue and be sued in its own name.*
- 2. That the opposite party was employed as a Asstt. Fitter with the applicant, on 11.8.91 when he was on duty on bus No. _ of route No. x on checking by the checking staff, following irregularities were found:*
 - i. On 11.8.91 at about 22.15. hrs. under the influence of liquor, he entered in foreman office, abused and bate Shri*
 - ii. Ranjit Singh, Asstt. Foreman who was sitting with the*



- iii. Result his hand and left ear were injured. Shri Mohinder Singh, S/Havaladar taken out a quarter bottle of wine from his pocket*
- iv. Which was half empty.*

- 3. *That on the basis of the report of Shri Ranjit Singh, Asst. Foreman with its enclosures, the opposite party was served with a B. No. 1888 Charge sheet vide No. K/AI (T)/CS-53/91/807 dated 30.8.91 and the following charges were levelled against him.*

On 11.8.91 at about 22.15 hrs. under influence of liquor, he entered in Foreman who was sitting there with the result his hand and left ear were injured. Shri Mohinder Singh, S/Havaladar taken out a quarter bottle of wine from his pocket which was half empty.

- 4. *That irregularities of opposite party tantamount of misconduct within the meaning of para 19(e), 19 (g) and 19(m) of the standing orders governing the conduct of D.T.C. employees.*
- 5. *That an oral enquiry and detailed investigations were held in this case. The opposite party was given full opportunity to defend his case who he availed.*
- 6. *That the enquiry was conducted according to the rules and at no stage and principle of Natural Justice was floated. During the enquiry, statement of Shri Ashok Kumar were recorded.*
- 7. *That the enquiry officer found all the charges levelled in the charge-sheet proved against the opposite party and forwarded the case to the D.M. KJD. Who was the punishing authority.*
- 8. *That after careful consideration of the report of the Enquiry Officer and the past record, the D.M. KJD. By virtue of the*



powers delegated to him, issued show- cause memorandum No. KJ Al (T)/CS-53/91/92/349 dated 12.3.92 directing the employee to show-cause as to why he should not be terminated / removed /dismissed from the services of the Corporation.

- 9. That the opposite party submitted the reply vide his letter dated 25.3.92 to the show cause notice which was considered by D.M. KJD.*
- 10. That the D.M. KJD. after fully considering the case has decided for his termination/ removal from the services of the Corporation.*
- 11. Though the reference made in respect of which pendency is alleged, is ultravires, the power of the Secretary, Labour Delhi Admn. Delhi and the same is illegal, it may be useful to mention that the order of reference has been challenged in the High Court and the present application U/S 33(2) (b) of I.d. Act, 1947 is being filed as a matter of abundant Caution and without prejudice to the right of the applicant in the Civil Writ Petition.*
- 12. That the Management has issued termination/ removal/ dismissal order dated 24.4.92 and has also remitted one months wage by M.O. No. 4735 dated 24.4.92 as required u/s. 33(2) (b) of the I.D. Act simultaneously.*
- 13. That the Management relies on the proceedings of the enquiry and other ansillary documents. It is requested that the validity of the domestic enquiry be considered as a preliminary issue and permission to adduce evidence and prove charges before the Ind. Tribunal be granted in case the decision of the preliminary issue is against the Management.*

It is prayed that the Industrial Tribunal may be pleased to approve the action taken, namely termination/



removal/dismissal of the opposite party from the service of the Corporation.

*For
Delhi Transport Corporation.
Secretary D.T.C. Board Delhi
Transport Corporation
(A Government of India Undertaking)
Indraprastha Estate, New Delhi-
110002*

*New Delhi
Dated: 24.4.92*

VRIFICATION:

I, P.Dutt. Secretary, Delhi Transport Corporation Board do hereby verify that the contents of paragraphs 1 to 12 of the application are true as per knowledge derived from records. Para 13 contains legal submission prayer.

Verified on this day 24.4.1992 at Delhi.

*Secretary D.T.C. Board
Delhi Transport Corporation
(A Government of India
Undertaking)
Indraprastha Estate, New Delhi-110002*

*New Delhi
Dated: 24.4.92”*

10. The Presiding Officer, Industrial Tribunal has framed the issue in respect of the application under Section 33(2)(b) of the I. D. Act, and the same is reproduced as under :



“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?”

11. On 16.08.2002, the Enquiry Officer has held the enquiry to be vitiated, and the order passed by the Enquiry Officer dated 16.08.2002 is reproduced as under:

“3. On the basis of pleading following preliminary issue was framed on 11.1.94: “Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?”

4. To prove the allegations the applicant produced AW-1 Sh. Suresh Chand who filed his affidavit Ex. AW1/A and referred the documents Ex. AW1/1 to Ex. AW1/3. In his affidavit he deposed that he had been working as Junior Clerk (Typist) with Sh. Mohd. Irfan, enquiry officer and he happened to be present during the enquiry proceedings. The enquiry proceedings started on 22.1.91 in pursuance of the charge sheet dated 30.8.91, Ex. AW1/1 and due opportunity was given to the respondent and the proceedings are Ex. AW1/2 and the finding is Ex. AW1/3. He came into the witness box as secondary evidence as Sh. Mohd. Irfan, enquiry officer has left/resigned the services and whereabouts are not known. He was cross examined. During the cross examination he admitted that he could not say about the charges on which basis the proceeding were initiated and he can identify the signatures only. He could not say how long the proceedings continued.

5. On the other hand the respondent entered into the witness box as RW-1 and filed his affidavit Ex. RW1/A in which he deposed that enquiry conducted was against the principle of natural justice. He was not given any opportunity to defend his case or to cross examine the witnesses.

6. In the nut-shell the applicant did not have the enquiry officer to prove the enquiry proceedings. The witness produced by applicant AW-1 Shri Suresh Chand has just proved the



signatures on the enquiry proceedings which vitiated the enquiry proceedings. Consequently, the enquiry proceeding are hereby held to be vitiated and the issue is decided against the applicant.”

12. Learned counsel for the DTC has vehemently argued before this Court that merely because the Enquiry Officer was not produced before the Industrial Tribunal, by no stretch of imagination, the Tribunal could have arrived at a finding that the Enquiry Officer proceedings stood vitiated.

13. Learned Single Judge has considered the aforesaid issue, and rightly arrived at a conclusion that non-production of Enquiry Officer cannot render the enquiry non-est, and in those circumstances the order dated 16.08.2002 was set aside.

14. Industrial Tribunal in O. P. 168/1992 has framed three issues, which are as under:

- “1) Whether the respondent committed the mis-conduct as alleged against him?
- 2) Whether the petitioner remitted full one month’s wage to him as per provision of Section 33(2)(b) of the I. D. Act?
- 3) Relief.”

15. The Labour Court vide order dated 02.05.2003 decided the first issue against the DTC, and the approval sought by the DTC was rejected, dismissing the application under Section 33(2)(b) of the I.D. Act.

16. The Labour Court on 02.05.2003 has passed the following order:

“ORDER

1. The applicant has filed this application under Section 33 (2) (b) of I.D. Act for approval of its action to remove the



respondent from service. The brief facts of the case are that on the basis of report of Shri Ranjit Singh, Asstt. Foreman, a charge sheet dated 30.8.91 was issued to the respondent. The charges levelled against the respondent are that on 11.8.91 'at about' 22.15 hours, he under the influence or liquor entered into the office of Foreman and abused and beat Shri Rainit Singh, Asstt. Foreman. Due to beating he sustained injuries in his hand and left ear. Thereafter Shri Mohinder Singh S/Havaladar took but a quarter bottle of wine from his pocket which was half empty. The irregularities of respondent amount to misconduct within the meaning of para 19 (a), (g) & (m) of the standing orders governing the conduct of DTC employees. The disciplinary authority removed the respondent from service vide order dated 24.4.92 and remitted full one month's wage to him by way of money order.

2. Respondent has filed the reply to the approval application of the applicant in which he denied the allegations levelled against him.

3. Following preliminary issue was framed on 11.1.94:

"Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?"

4. Vide order dated 16.8.2002, the issue of validity of enquiry was decided against the applicant. On the basis of pleading of parties, following issues were framed:

1) Whether the respondent committed the misconduct as alleged against him?

2) Whether the petitioner remitted full one month's wage to him as per provision of Section 33 (2) (b) of I.D. Act?

3) Relief.



5. *To prove its case, applicant produced AW2 Shri V.K. Palta and respondent did not led any evidence. I have heard the arguments and my issue-wise finding is as under.*

6. ISSUE NO.1

This issue is with regard to commission of misconduct by the respondent and onus to prove the issue is on the applicant. But applicant did not produce any evidence to prove the alleged misconduct of respondent. Consequently, It is held that the applicant has failed to prove the alleged misconduct against the respondent. Consequently, the issue is decided against the applicant.

7. ISSUE NO.2

AW-2 Shri V.K. Palta entered into the witness box and filed his affidavit dated 4.12.02 in which he deposed that alongwith the removal letter one month salary of Rs,1719/- was sent to the workman by money order. He deposed that one month salary as per salary certificate was sent to the workman and he proved the documents as Ex.AW2/2 to EX.AW2/4. The respondent did not led any evidence in rebuttal to the same, Consequently, the issue is decided in favour of applicant.

8. ISSUE NO.3

Keeping in view the finding on Issue No.1, the approval sought by applicant is rejected and application under Section 33 (2) (b) of I.D. Act is hereby dismissed. File be consigned to record room.

-SD-

(P. S. TEJI)

P.O. INDUSTRIAL TRIBUNAL-II

Dated: 02.05.2003 KARKARDOOMA COURTS : DELHI”

17. It is true that the Labour Court has framed the issues in the matter and did grant an opportunity to the appellant employer to prove the misconduct



of the Workman, however, except producing one witness PW-2, L. N. Venkat, no other witness was produced before the Labour Court to establish the misconduct of the employee, and, therefore, the Learned Single Judge has disposed of the petition preferred by the employer DTC as well as the Workman, by granting a lumpsum compensation to the tune of Rs. 10 Lacs to the Workman for the period he was out of the job.

18. It is a well settled position of law that appreciation of evidence is not permissible to be done by the High Court to arrive at a particular finding in a Departmental Enquiry. However, the enquiry report can be interfered with, in case, the findings are perverse. In the present case, the Learned Single Judge has carefully considered the evidence on record adduced during the Departmental Enquiry, and the relevant paragraphs i.e. Paragraph 11 to Paragraph 19, of the judgment read as under:

“11. In so far as evidence in the enquiry proceedings is concerned, a perusal of the evidence on record shows that the allegations were made by one Sh. Ranjit Singh, Assistant Foreman against the Workman. The said allegations were four in number and to the following effect:

“On 11.8.91 your duty was in the depot work shop between 21:00 hrs to 5:30 hrs during which you committed following irregularities:

- 1. You forcibly got your attendance marked by Sh. L.N. Benket foreman at 22.15 O'clock in drunken position and told to the assistant foreman Sh. Ranjeet Singh sitting there that if you give evidence against me, I will teach you a lesson outside the depot.*
- 2. You held him by his neck and abused him.*
- 3. In the presence of body fitter Sh. Vijay Kumar, you beat the assistant foreman in the body section*



due to which, he received injury in his hand and at the left ear.

4. Security Hawaldar Sh. Mahendra Singh took at one Paua (liquor) from your pocket, which was half empty. By doing so, you have misbehaved with higher officer and violated the rules and has breached the discipline.”

12. In respect of the above allegations, witnesses had deposed before the enquiry officer. Mr. Ranjit Singh, who is the Complainant himself deposed, and was also cross-examined.

13. In terms of the independent witnesses, Sh. L. N. Venkat, Foreman, who was the eye witness was examined. One Sh. Ran Singh, the Assistant Foreman was also cross-examined. A perusal of their evidence shows that though Sh. Ranjit Singh had made various allegations including of physical manhandling and abuse, the other witnesses including the Foreman did not confirm any of these allegations. The only confirmation is of the occurrence of the incident, the words used by the Foreman are “आपस में बातचीत हुई कुछ वारदात हुई”. The relevant extract is as under:

“State of Sh. L.N.Venkat foreman Batch No. 9082.

On 11.8.91 my duty was in the night from 21.00 O'clock to 5.30 O' clock. In the evening after marking the attendance of assistant fitter Ashok Kuma, I marked his duty with fitter Manwal Lal. After sometime, there was some talk between Asst. Fitter Ashok Lal and Assistant foreman Ranjeet Singh and there was hot verbal arguments between both regarding same enquiry. After that we pacified both of them they went for there respective work. Around 23.30 O' clock some quarrel took place between assistant fitter Ashok Kumar and assistant foreman Ranjit Singh, Sh. Ranjit Singh called security guard Sh. Mahendra Singh. Thereafter, also reached to body section and again



pacified both of them. After sometime around 00.30 one bus which was in break down condition standing in the line Ashok Kumar was send to attend the same. Thereafter they went in the morning and Sh. Ranjeet Singh was doing his duty in the morning, there was also some hot discussion between them thereafter, Assistant Foreman Sh. Ranjeet Singh gave report of the incident. I have nothing to say more.”

14. Therefore, the Foreman confirms that there was some incident/dispute/tussle between the parties. Mr Ran Singh in his statement also does not confirm the allegation. His statement is extracted below:

“Statement of Sh. Ran Singh assistant foreman T.No.9101.

On 11.8.91 my duty was in night shift in the depot work shop. After marking the attendance there was some verbal altercation between Ashok Kumar and Ranjeet Singh. I told to Ashok Kumar to cool down. After sometime I came to know that Ashok Kumer went to Sh. Ranjeet Singh and told him something. Sh. Ranjeet Singh called the duty officer and the security guard who forbid him not to do so. Thereafter Ashok Kumar and Ranjeet Singh started doing their work. After some time, one report came for which Ashok Kumar ana I went to attend and after that I went my house after finishing my duty. Later they had another enquiry to attend. I do not know what was the matter between Ranjeet Singh and him. I have nothing to say more.

Question ask by enquiry officer.

Q. Can you tell where were you at about 22.15 on 11.8.91 in the depot.

Ans. In the office of foramen.

Q. Can you tell about that Sh. Ashok Kumar (Assistant fitter) being drunk coming in foramen



office and giving threat to Sh. Ranjeet Singh regarding giving evidence.

Ans. I do not know about Ashok Kumar being drunk but he gave threatening therefore quarrel took place.

Q. Whether assistant fitter Sh. Ashok Kumar abused him.

Ans. No.

Q. Can you tell that you recovered a wine bottle from the pocket of Sh. Ashok Kumar which was half empty.

Ans. No.”

15. Sh. Ran Singh also denies that there was any verbal abuse by Mr Ashok Kumar and denied any knowledge of whether the Workman was in an inebriated state or not, although he does state that there was some threat given by the Workman which led to the dispute.

16. Sh. Mahendra Singh, the Security Constable, also stated that when he reached the place, there was no dispute and nobody affirmed to him that there was any dispute.

“On this occasion difference witness Sh. Mahendra Singh security Hawaldar B.No.450 is asked to give his statement.

Statement of Mahendra Singh security hawaldar B.No. 450.

On 11.8.91 my duty was in night shift when I reached to the place of incident I did not find any quarrel there I collected all the people there and enquired from them but no one told about the quarrel after sometime foreman sent me outside to attend a breakdown case. I have to not to say anything.”

17. Thus, it is not clear from the evidence on record that the allegations were correct. Insofar as the evidence of Sh. Ran Singh is concerned, he also confirmed that there was a ‘dhamki’ which was given and a ‘jhagda’ which happened. This



is the best evidence which has emerged even from the enquiry report. Thus, the allegations which were raised against the Workman have not been fully established.

18. Even the enquiry report itself holds that out of the allegations which was made, the first two were partially proved, and one was fully proved. Therefore, as per the evidence which has emerged from the enquiry report, there is no independent corroboration of the fact that the Workman was also under the influence of liquor. Under such circumstances, the question would be as to whether the award is sustainable.

19. In view of the above evidence, even after taking into consideration the Enquiry Report, the conclusions in the enquiry report that the allegations were proved are not tenable. The impugned award dismissing the application under Section 33(2)(b) is therefore been held to be correct but on different grounds i.e. no proof of the allegations levelled. By virtue of this finding, the removal order dated 24th April, 1992 is also liable to be quashed.”

19. The exercise undertaken by the Learned Single Judge in appreciating the evidence certainly makes it very clear that not a single independent witness before the Enquiry Officer has stated about the alleged assault, and, even there was a denial by the witnesses in respect of the verbal abuse by the employee. The Learned Single Judge has held the findings arrived at by the Enquiry Officer to be perverse findings.

20. Other important aspect of the case is the Workman – during the pendency of the petitions before this Court, has attained the age of superannuation, and, in those circumstances, instead of directing reinstatement, for the period within 1992-2003 (in total 11 years) – as nothing was paid to the Workman, Learned Single Judge has granted a lumpsum of Rs. 10 Lacs to the Workman.



21. Keeping in view the judgements delivered by the Hon'ble Supreme Court in the cases of *Allahabad Bank and Ors. v. Krishan Pal Singh*, (SLP(C) No. 19648/2019, decided on 20th September 2021), *Ranbir Singh v. Executive Eng. P. W. D.*, (Civil Appeal No. 4483/2010, decided on September 2, 2021), and followed by this Court in *M/s Hindustan Antibiotics Ltd. v. BN Singh* (W.P.(C) 8297/2016 and CM APPL. 867/2020, decided on 28th October, 2021), in the considered opinion of this Court, the Management was certainly granted an opportunity by the Labour Court to prove the misconduct, and the Management has miserably failed to prove the misconduct before the Labour Court by producing witnesses. The Learned Single Judge has minutely scanned the entire evidence on record in order to arrive at a finding in the matter, and, therefore, as findings arrived at by the Enquiry Officer were preserve findings, and the employee has already attained the superannuation, the learned Single Judge was justified in granting a lumpsum compensation to the tune of Rs. 10 Lacs for the period, the employee was out of service i.e. within 1992-2003.

22. The learned Single – as the Workman has already superannuated, has also directed the employer to grant him Provident Fund and Gratuity, and therefore, this Court does not find any reason to interfere with the judgement passed by the Learned Single Judge in the peculiar facts and circumstances of the case.

23. The Appeal is, accordingly, dismissed.

24. The other connected appeal preferred by the Workman i.e. LPA 119/2022, also stands dismissed.



25. However, it is made clear that, in case, at the relevant point of time, the Workman was holding pensionable post, he shall also be entitled to the pension and other dues.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JULY 22, 2022
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